

# Calendar No. 1944

82D CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ No. 2021

## ESTATE OF EDWARD B. FORMANEK, DECEASED

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JULY 1 (legislative day, JUNE 27), 1952.—Ordered to be printed

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Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

### R E P O R T

[To accompany H. R. 5095]

The Committee on the Judiciary, to which was referred the bill (H. R. 5095) for the relief of the estate of Edward B. Formanek, deceased, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

#### PURPOSE

The purpose of the proposed legislation is to pay the estate of Edward B. Formanek the sum of \$10,000 in full settlement of all claims of said estate against the United States on account of the death of said Edward B. Formanek, who lost his life on May 14, 1943, when the airplane which he was piloting was struck by a United States Army bomber on the runway at the Birmingham Municipal Airport, Birmingham, Ala., such airport at the time being under the control and management of the Government.

#### STATEMENT

The basic facts and circumstances of the accident in which the late Edward B. Formanek met his death are stated by the Department of the Army as follows (in a letter report dated September 27, 1951, the full text of which hereinafter appears as a part of this report):

On May 14, 1943, at about 5:15 p. m., a B-24 Army airplane, piloted by an Army officer on an official mission, approached the Birmingham Municipal Airport, Birmingham, Ala., for the purpose of landing at said airport. An air traffic control tower, operated by a civilian employee of the Department of Commerce, was in operation for the control of traffic at the airport. The Army pilot received clearance from the traffic control operator by radio and by visual traffic

light to land his plane, but he believed it necessary to circle the field again in order to land safely. As the Army plane passed over the field, a Monocoupe 90A, a civilian airplane operated by Edward B. Formanek on a cross-country business flight, approached the airport. The civilian airplane was not equipped with a radio receiver or transmitter. The traffic control operator turned the visual traffic light on green, signaling clearance for the civilian plane to land. Mr. Formanek overshot the landing field on his landing approach, and he then proceeded around the field and as he made his second approach to land the traffic control operator directed a red light toward him signaling for him not to land. Despite this signal, Mr. Formanek landed his plane heading south on the north-south runway and then stopped his plane on the east side of the north-south runway near its intersection with the east-west runway. The traffic control operator then directed a flashing green light toward Mr. Formanek which meant for him to continue taxiing. Mr. Formanek did not move his plane, and the traffic control operator then directed a flashing red light which meant for Mr. Formanek to move his plane off the runway. Mr. Formanek still did not move his airplane. At this time the Army airplane, having circled the airport, was proceeding south approaching the north-south runway. When the Army plane was about 100 feet from the north end of the runway the Army pilot saw the civilian plane on the runway and a member of his crew immediately called the control tower by radio and requested that the civilian plane be moved off the runway. The traffic control operator replied that he was signaling the civilian plane to clear the runway. The Army pilot then landed his plane. When the wheels of the Army plane touched the runway its pilot applied the brakes and swerved the plane to the extreme west side of the runway so that the Army plane would miss the civilian airplane. When the Army plane was about 1,000 feet from the civilian plane the civilian plane made a right turn of about 90° and proceeded west across the intersection of the north-south and east-west runways into the path of the approaching Army airplane. The Army pilot applied his brakes and swerved to his right off the runway in an effort to avoid the civilian plane, but he was unable to prevent the Army airplane from crashing into the civilian plane.

As a result of the collision the civilian airplane was demolished, the Army plane was damaged considerably, and Mr. Formanek sustained severe injuries from which he died shortly after the accident occurred.

The Civil Aeronautics Board conducted an investigation of this accident and submitted a report dated December 8, 1943, in which is stated the finding that the Monocoupe piloted by the late Mr. Formanek (hereinafter referred to as the decedent) had landed at least 3 minutes prior to the time when the B-24 entered the landing approach area. During that 3-minute period, according to the Army's statement of facts, the traffic-control operator had first directed a flashing green light toward the decedent—a signal directing the latter to continue taxiing his plane along the runway. There was no response to this signal, so the traffic-control operator then directed a flashing red light toward the decedent—a signal directing the latter to move his plane off the runway. This signal also failed to elicit response from the decedent, and his plane remained stationary on the runway.

The civilian plane was not equipped with a radio receiver or transmitter, but had been cleared, in regular course and by the proper authorities, for the flight which was completed when the plane was landed at the Birmingham Airport. Accordingly, the only means available to the traffic-control operator for controlling decedent's aircraft were the traffic signal lights. The operator used such means of attempted control over a period of 3 minutes preceding the accident, and the total lack of response plainly indicated that he did not have control of the aircraft. The failure of response is unexplained, and the reason therefor can only be guessed since the explanation died with the decedent. However, it is noteworthy that traffic-control procedures promulgated by the Civil Aeronautics

Administration pertaining to non-radio-equipped aircraft recognize the disadvantages of visual signals, and anticipate the possible failure of communication by this means. Among the more apparent disadvantages are (1) the pilot may not be looking at the control tower at the time a signal is directed toward him, and (2) the instructions transmitted by a light signal are very limited since only approval or disapproval of a pilot's presumed actions can be transmitted. Further, no supplementary or explanatory information can be transmitted except by the use of the general warning signal, which is a series of alternating red and green flashes from a directed control light to advise the pilot to be on the alert for unusual or hazardous conditions. It is significant in this case that, so far as the evidence before the committee discloses, no general warning signal was transmitted to the decedent.

It is but a logical conclusion that so long as the civilian plane remained stationary on the runway it constituted a physical obstruction to landing traffic, and that the failure of decedent to respond to the operator's signals over a period of 3 minutes was clear evidence that the operator actually had no control of the civilian plane. In these circumstances it seems that the traffic-control operator, in performing his primary function of regulating landing traffic, should have directed the Army plane to continue circling the field until the obstruction was cleared.

The traffic-control operator had a ready means of communicating with the Army plane by radio, by which earlier orders had been transmitted; the Army's statement of facts shows that the operator did not warn the Army plane away from the landing approach but instead permitted the Army plane to land upon an apparent assumption that the decedent would heed his signal to clear the runway in time for the Army plane to land safely. In the opinion of the committee such an assumption was plainly unwarranted in view of (1) the fact that the decedent landed his plane despite a signal directing him not to land; (2) the decedent did not respond to the next signal directing him to continue taxiing his plane after it had been landed; and (3) the decedent did not respond to the third signal directing him to move his plane off the runway. In view of this unusual series of events the operator had ample notice that an emergency situation existed by reason of physical disability on the part of the decedent, mechanical difficulty with the civilian plane, or for any other of a variety of reasons which can only be surmised at this time. In any event, the committee considers the facts and circumstances to justify a conclusion that the cause of the accident is not attributable to negligence on the part of the decedent, which is the conclusion reached by the Department of the Army, but instead is attributable to the faulty judgment of the traffic-control operator who was acting as an agent of the Government at the time of the accident.

The House report accompanying this bill contains two affidavits from eyewitnesses of the accident and a statement from two others, all of whom were flight instructors familiar with the rules and regulations applicable in the circumstances giving rise to this accident (H. Rept. No. 1953, 82d Cong., 2d sess.). Said affidavits and statement, which are appended hereto and made a part of this report, expressly state informed views as to the cause of the accident which are at variance with the views of the Department of the Army.

At the time of the accident the decedent was 23 years of age, and was employed as an aeronautical engineer by the Universal Moulded Products Corp., of Bristol, Va., at a salary of \$115 per week. He left surviving him his wife, Mrs. Lorraine Formanek, also 23 years of age, and a son 1 year old.

After careful consideration of all the facts and circumstances, and for the reasons stated hereinabove, the committee recommends favorable consideration of H. R. 5095.

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DEPARTMENT OF THE ARMY,  
Washington, D. C., September 27, 1951.

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. CELLER: The Department of the Army is opposed to the enactment of H. R. 5095, Eighty-second Congress, a bill for the relief of Mrs. Edward B. Formanek.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Mrs. Edward B. Formanek, the sum of \$10,000. The payment of such sum shall be in full settlement of all claims of the said Mrs. Edward B. Formanek against the United States on account of the death of her husband, Edward B. Formanek, who lost his life on May 14, 1943, when the airplane which he was piloting was struck by a United States Army bomber on the runway at the Birmingham Municipal Airport, Birmingham, Alabama, such airport at that time being under the control and management of the Government."

On May 14, 1943, at about 5:15 p. m., a B-24 Army airplane, piloted by an Army officer on an official mission, approached the Birmingham Municipal Airport, Birmingham, Ala., for the purpose of landing at said airport. An air traffic control tower, operated by a civilian employee of the Department of Commerce, was in operation for the control of traffic at the airport. The Army pilot received clearance from the traffic control operator by radio and by visual traffic light to land his plane, but he believed it necessary to circle the field again in order to land safely. As the Army plane passed over the field, a Monocoupe 90A, a civilian airplane operated by Edward B. Formanek on a cross-country business flight, approached the airport. The civilian airplane was not equipped with a radio receiver or transmitter. The traffic control operator turned the visual traffic light on green, signaling clearance for the civilian plane to land. Mr. Formanek overshot the landing field on his landing approach, and he then proceeded around the field and as he made his second approach to land the traffic control operator directed a red light toward him signaling for him not to land. Despite this signal, Mr. Formanek landed his plane heading south on the north-south runway and then stopped his plane on the east side of the north-south runway near its intersection with the east-west runway. The traffic control operator then directed a flashing green light toward Mr. Formanek which meant for him to continue taxiing. Mr. Formanek did not move his plane, and the traffic control operator then directed a flashing red light which meant for Mr. Formanek to move his plane off the runway. Mr. Formanek still did not move his airplane. At this time the Army airplane, having circled the airport, was proceeding south approaching the north-south runway. When the Army plane was about 100 feet from the north end of the runway the Army pilot saw the civilian plane on the runway and a member of his crew immediately called the control tower by radio and requested that the civilian plane be moved off the runway. The traffic control operator replied that he was signaling the civilian plane to clear the runway. The Army pilot then landed his plane. When the wheels of the Army plane touched the runway its pilot applied the brakes and swerved the plane to the extreme west side of the runway so that the Army plane would miss the civilian airplane. When the Army plane was about 1,000 feet from the civilian plane, the civilian plane made a right turn of about 90° and proceeded west across the intersection of the north-south and east-west runways into the path of the approaching Army airplane. The Army pilot applied his brakes and swerved to his right off the runway in an effort to avoid the civilian



plane, but he was unable to prevent the Army airplane from crashing into the civilian plane.

As a result of the collision the civilian airplane was demolished, the Army plane was damaged considerably, and Mr. Formanek sustained severe injuries from which he died shortly after the accident occurred.

The Civil Aeronautics Board conducted an investigation of this accident and in its report, dated December 8, 1943, made the following findings:

"It could not be determined whether Formanek observed the signals and did not understand them or that he saw them at all. It is possible that his limited experience, particularly in cross-country flying, contributed to his failure to notice or heed the signals from the traffic-control tower. Formanek had completed primary and secondary CPT flight courses and it is reasonable to assume that during this training he had received sufficient instruction to understand such traffic signals even though he may have had little or no actual experience with them. Nevertheless, with no knowledge whatever of traffic signals, there could be no reason, other than utter confusion, for his taxiing directly across the runway in use, and the one on which he had just landed, without first making a visual survey for incoming traffic.

"It is possible that had the traffic-control operator, either by radio or signal lights, or both, suggested to, or directed the B-24 pilot not to land, the accident might have been avoided. However, the Monocoupe had landed at least 3 minutes before the B-24 and was standing motionless on the extreme edge of the runway. Therefore it was reasonable for Skaggs [the traffic-control operator] to assume that Formanek would have taxied off the runway in plenty of time to make room for the approaching B-24 or that Formanek had seen the B-24 and would remain parked where he was until after the B-24 had landed. If Formanek had done either the accident would not have occurred. It is also possible that when Captain Smith [the Army pilot], on the latter part of his landing approach, became aware of the presence of the Monocoupe, he might have continued his flight around the field for another approach. However, on account of the rising terrain ahead, this action might have been difficult as well as hazardous, as by that time the flaps on the B-24 had been lowered, and the trim of the airplane altered.

"The weather at Birmingham at the time of the accident was clear, wind south-east—5 miles per hour and had no bearing on the accident.

"It is apparent that the probable cause of the collision was the failure of Pilot Formanek to heed the airport traffic-control signals, as well as his poor judgment in failing to observe incoming traffic on the airport before changing his heading 90° and taxiing directly across the runway."

No claim has been presented to the War Department or the Department of the Army for any damages resulting from this accident.

The records of the Department of the Army show that at the time of his death Mr. Formanek was 23 years of age; that he was engaged in the occupation of aeronautical engineer from which he was earning \$115 per week; and that he left surviving his wife, Mrs. Lorraine Formanek, 23 years of age, and a minor son, 1 year of age, who were dependent upon him for their support. The records of the Department further show that as a result of the death of Mr. Formanek actual burial expenses in the amount of \$300 were incurred by his widow. Mrs. Formanek has since remarried. She is now Mrs. Lorraine Griner and is presently residing at 1900 South 58 Court, Cicero, Ill.

The evidence fairly establishes that the proximate cause of this accident and the resulting property damage and death of Edward B. Formanek was his negligence in failing to comply with the traffic-control signals directed to him from the traffic-control tower and in failing to keep a proper lookout for incoming traffic before making a 90° turn and taxiing his airplane directly across the north-south runway. In view of the negligence of Mr. Formanek there is no basis for a claim against the United States for any damages sustained as a result of said accident. Accordingly, the Department of the Army is obliged to recommend that this bill be not favorably considered by the Congress.

A similar bill, H. R. 1232, for the relief of this claimant was introduced in the Seventy-ninth Congress. The chairman, Committee on Claims, House of Representatives, requested the War Department to submit a report on said bill, and on May 17, 1946, the Secretary of War submitted a report on that bill similar to the report herein submitted on H. R. 5095, Eighty-second Congress.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

FRANK PACE, Jr.,  
*Secretary of the Army.*

COINER FLYING SERVICE, INC.,  
Waynesboro, Va., September 4, 1951.

Subject: Statement of Mr. C. Benton Coiner in connection with the bill introduced in Congress for the relief of Mrs. Edward B. Formanek.

1. The undersigned was a witness to the accident at Birmingham Municipal Airport, Birmingham, Ala., on May 14, 1943, between a B-24 Army airplane and a civilian airplane piloted by Mr. Edward B. Formanek.

2. In my company, and also witnesses to the accident, were the following: Mr. A. M. Coiner, Waynesboro, Va., Mr. Elbert Foley, Mount Sidney, Va., Mr. Wilson Dozier, Staunton, Va.

3. From statements of other persons it is my understanding that the B-24 airplane did not make a landing on the first approach because a faulty landing gear.

4. Mr. Formanek landed and remained on the runway. In accordance with CAA regulations no aircraft should be allowed to land until the runway was cleared. The B-24 airplane made its second approach and landed while Mr. Formanek's airplane remained on the runway.

5. The pilot of the B-24 airplane upon landing apparently became aware of the presence of Mr. Formanek's airplane on the runway and started braking and bearing to the right to avoid a collision. Feeling that the collision was imminent, I looked to the tower and saw a flashing red signal directed to Mr. Formanek, meaning to clear the runway. Mr. Formanek's airplane moved slowly across the runway toward the hangars in compliance with the tower signal, thus placing himself directly in the path of the onrushing B-24 airplane without apparently ever being conscious of the presence of another airplane on the runway.

6. With my experience as a flight instructor and field operator, I feel sure that under the circumstances I would have reasoned and acted in accordance with the tower instructions much as Mr. Formanek did.

C. BENTON COINER.

All answers supplied and completely sworn and subscribed to before me, this day, 4th September 1951.

PHYLLIS V. KEISER,  
Notary Public.

My commission expires June 5, 1955.

DOZIER TIRE CO.,  
Staunton, Va., September 4, 1951.

Subject: Statement of Mr. Wilson B. Dozier in connection with the bill introduced in Congress for the relief of Mrs. Edward B. Formanek.

1. The undersigned was a witness to the accident at Birmingham Municipal Airport, Birmingham, Ala., on May 14, 1943, between a B-24 Army airplane and a civilian airplane piloted by Mr. Edward B. Formanek.

2. In my company, and also witnesses to the accident, were the following persons who, together with myself, were at the time flight instructors: Mr. A. M. Coiner, Waynesboro, Va., Mr. Elbert Foley, Mount Sidney, Va., Mr. C. B. Coiner, Waynesboro, Va.

3. I was on the field, within the locked enclosure, and the closest person (on the ground) to the accident. I reached the wreck before anyone else and assisted in removing Mr. Formanek.

4. The tower windows being open, it was possible for me to hear the bomber pilot inquire as to the Monocoupe on the runway. At the bomber's first request for this information he had plenty of time and altitude to go around. He asked again at a point near the end of the runway before touching down and at this point probably did not have sufficient altitude to go around safely.

5. In my estimation the tower was a contributing factor in allowing the bomber to complete his approach, while a ship he could not control was on the runway.

W. B. DOZIER, Jr.

All statements supplied and completely sworn and subscribed to before me, the 4th day of September 1951.

[SEAL]

A. M. JORSTAD, Notary Public.

My commission expires March 31, 1954.

COMMITTEE ON CLAIMS,  
*House of Representatives:*

This statement is offered in conjunction with the bill H. R. 5095 introduced by Mr. Sabath, which is now before the Committee on Claims of the House of Representatives.

We, the undersigned, were advised by Mr. Sabath's office that, in order to assure favorable action on the bill, it would be desirable to obtain additional evidence. The only evidence available to the Committee on Claims at the time of the introduction of the original bill was contained in a letter from the then Secretary of War, the Hon. Robert P. Patterson, dated May 17, 1946. This letter contained the conclusions of the Civil Aeronautics Board accident report of December 8, 1943, which placed the full responsibility for the accident on Mr. Formanek. This one-sided presentation of evidence formed the basis for the final negative action of the committee.

The only known impartial witnesses to the accident were four civilian pilot instructors who, after flying from Birmingham, Ala., through Bristol, Va., were the first to inform Mr. Formanek's associates of his death in the accident. Great effort was expended in locating these witnesses. As of this date, sworn statements have been obtained from two of them.

In the light of the witnesses' statements and the perusal of the Department of Commerce air traffic rules in force on the day of the accident, this additional evidence is presented in the form of a thorough study of the description of the accident as presented in the War Department letter.

This study discloses that from the moment of landing on the runway Mr. Formanek never left the runway and remained a physical obstacle to any airplane trying to land on this runway.

After landing, the next signal from the tower, a flashing green (to continue taxiing), was not carried out by Mr. Formanek who remained stationary and did not acknowledge the signal by the movement of the control surfaces as required by the Civil Aeronautics Administration rules. This fact should have made the traffic controller cognizant of the fact that the airplane on the runway, for some reason, was not under his control.

The succeeding signal, a flashing red which, as stated in the War Department letter, meant to leave the runway, was directed to Mr. Formanek and failed to obtain any response, his airplane still remained stationary on the runway. This should have been conclusive evidence to the traffic controller that the airplane was not under his control. At this point attention is drawn to the fact that the Civil Aeronautics Administration Manual 60, Air Traffic Rules, in effect on that date, defines a flashing red signal light to mean that the pilot is to taxi back to the hangar line. The meaning of the flashing red light (move the plane off the runway) as defined in the War Department letter is unfortunately not the correct one.

The failure of Mr. Formanek to respond to signals for more than 3 minutes, while standing on the runway, could be attributed to various probable causes. Among others might be illness, an insect in the cockpit, or, most probable, that he was trying to restart the engine. Such incidents, while occurring infrequently, are not unusual. The failure of Mr. Formanek to obey the red signal (not to land) could possibly be attributed to the same cause which contributed to his later failure to respond to signals while on the runway.

There was no logical explanation for the tower operator to direct the red light to Mr. Formanek on his second approach except to prevent him from landing due to the short interval of time remaining before the B-24 made its second approach for landing. Therefore, the element of time assumes extraordinary importance. With Mr. Formanek's airplane occupying the runway for 3 minutes without response, there was more than ample time for the traffic controller to use his judgment and direct the B-24 not to land. Both the context of the War Department letter and the excerpt from the Civil Aeronautics Board report strangely omit reference as to whether such permission to land was ever given the B-24. The Civil Aeronautics Board report further indicates that, had the B-24 pilot been advised not to land, the accident would have been prevented. The report further states that the B-24 pilot became aware of the presence of the Monocoupe airplane on the runway when only 100 feet away from the end of the runway, and then contacted the tower. This is crystal-clear proof that the traffic controller never did inform the B-24 pilot of the presence of the Monocoupe on the runway and of the possible collision, which shortly became a reality. However, the sworn statement of Mr. W. B. Dozier, Jr., proves that the B-24 pilot became aware of the presence of the Monocoupe on the runway much earlier. Mr. Dozier states

that there were two inquiries from the B-24, only the last being mentioned in the Civil Aeronautics Board report. He further states that the earlier inquiry of the B-24 pilot, heard over the loudspeaker system, was made when the B-24 pilot had plenty of time and altitude to go around. In reply to the B-24 pilot's inquiry, the traffic controller stated that he was signalling the Monocoupe to clear the runway. This reply was made in spite of the fact that for 3 minutes the traffic controller had been unable to evoke any response from the Monocoupe. When he permitted the B-24 to land, the traffic controller displayed a complete lack of judgment, and lost a clear opportunity to prevent the accident.

The last opportunity for the traffic controller to prevent the accident was lost when he directed a flashing red signal to Mr. Formanek in the last moment even as the B-24 was hurtling down the runway. The direction of this signal at that moment is verified by the sworn statement of Mr. C. B. Coiner. Had the traffic controller directed a steady red light (hold position) toward Mr. Formanek at least there could have been an offhand chance of preventing the accident. However, at this moment Mr. Formanek became cognizant of the flashing red signal directed toward him. The explicit meaning of this signal was to taxi to the hangar line which Mr. Formanek proceeded to do. However, he started the turn toward the hangar from the left side of the runway where he was standing, and it was humanly impossible to reach the hangar line without crossing the runway. Thus Mr. Formanek was placed in front of the B-24 in perfect obedience to the last signal of the traffic controller. It should be noted that the cabin arrangement of the Monocoupe airplane precludes observation to the rear or to either side by the pilot. Therefore, Mr. Formanek could not have possibly seen the landing B-24 while standing or even after turning 90°, and thus was denied the opportunity to exercise his own judgment against the ill-chosen signal of the traffic controller. Hence, the unjustified and far-fetched implication of the Civil Aeronautics Board report as to the "utter confusion" of Mr. Formanek should be directed toward the "confused judgment" which was so clearly displayed by the traffic controller.

We, the undersigned, both long-time personal friends of Mr. Formanek, present this study to the honorable members of the committee with the earnest hope that the onus of the sole responsibility for the accident should be lifted from Mr. Formanek and that a just and favorable action will be taken for the relief of Mrs. Formanek.

Respectfully,

PAUL V. DRONIN,  
VINCENT J. BERINATI.

SEPTEMBER 24, 1951, *Washington, D. C.*

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